THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.7475 of 2000

DATED: 26.07.2007

Between:

M.Venkaiah and others. .. Petitioners

And

Principal Secretary to Govt. of A.P.,
I & CAD Department, Hyderabad
And others. .. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.7475 of 2000

ORDER:

This writ petition is filed seeking *mandamus* to declare the action of the respondents in not paying the difference of market value determined under the general Land Acquisition Act, 1894 (for short, 'L.A.Act') from that of the market value determined by applying the provisions of Nagarjuna Sagar Project (Acquisition of Lands) Act 32 of 1956 (for short, 'Nagarjuna Sagar Act') as unconstitutional and arbitrary; and consequently direct the respondents to pay the difference of market value payable to them in terms of award No.24/81 dated 21.11.1981 with interest @ 24% from the date of the award.

2. It is the case of the petitioners that the respondents have acquired their lands to an extent of 22 acres 22 guntas situated at Garadepalli village and Mandal for the purpose of formation of CADA road within the limits of Garedepalli village, as such, the Special Deputy Collector, Jaggayyapet has passed the award vide proceedings No.LAKS 24/81 dated 21.11.81 applying the provisions of Nagarjuna Sagar Project (Acquisition of Land) Act 32 of 1956 (for short, 'Nagarjuna Sagar Act') taking the cut off date for fixing the market value as on 01.07.1953. They received the compensation under protest and demanded not only enhancement of the compensation but also payment of compensation as per the provisions of general L.A. Act, 1894. But as soon as they came to know that the Land Acquisition Officer has referred the matter under Section 18 of

the L.A. Act in respect of other land owners and the judgment was also passed enhancing the compensation, they immediately filed an application under Section 28 (A) of the L.A. Act within the limitation taking the date of their knowledge of the civil Court award for re-determining the compensation in respect of their lands also. But, as the respondents have not re-determined the compensation, they filed WP.No.1917 of 1990 and the same was allowed by a common judgment dated 24.09.1993 directing the respondents to re-determine the compensation by holding that an application under Section 28(A) of the L.A.Act can be filed within the period prescribed taking the date of knowledge as the starting point for counting the prescribed period. Against the same, the respondents preferred SLP 13056, 13057 and 13058 of 1994 before the Supreme Court, whereby the Supreme Court ordered for stay of the judgment passed by the Hon'ble High Court.

Further, the main grievance of the petitioners is that as they did not get the compensation as per the provisions of the L.A. Act, they got filed a representation on 30.11.1998 before the respondents requesting them to pay the compensation as per the provisions of general L.A.Act, which was already determined in the award proceedings dated 21.11.1981, but the respondents have not taken any action. Hence, this writ petition is filed.

3. Heard the learned counsel for the parties.

4. No doubt, in the counter affidavits filed on behalf of respondents, all the averments made by petitioners are denied and they have stated that the distribution of compensation under the provisions of Nagarjuna Sagar Act is valid.

5. The parliament in its wisdom made an amendment to the

Constitution of India, and thus Article 31-A of the Constitution was inserted by the Constitution (First Amendment) Act, 1951. According to which no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc., shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19. According to the second proviso to the said Article where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

6. When a case with similar facts came up for a debate, a Division Bench of this Court in **K. RANGAIAH v. STATE**[1], had clearly stated that applying the provisions of the Nagarjuna Sagar Act for those acquisitions made after 20-06-1964 is ultra vires of Article 31-A of the Constitution of India. In paragraph 7 of the said judgment, it is held as follows--

> 7. It was however sought to be argued by the learned Advocate-General that the second proviso which was introduced by the Constitution (7th amendment) Act and which came into effect on 20-06-1964 cannot affect the Nagarjunasagar Act of 1956. He drew our attention in this connection to the fact that both the Constitution (First Amendment) Act which introduced Art.31-A and the Constitution (Fourth Amendment) Act which imposes certain amendment to Art.31-A expressly provided that they will have retrospective effect; whereas no such provision was made by

> the Constitution (Seventh amendment) Act. We are unable to accept that contention of the learned Advocate-General. As has been held by the Supreme Court the second proviso introduced by the Constitution (First Amendment) Act creates a fundamental right in favour of persons who own lands within the ceiling limit and are cultivating them personally. The Constitution categorically states that such lands cannot be acquired except on payment of the market value on the date of the notification. Any law providing for payment of market value of les than that amount or any acquisition made under such law would infringe the fundamental right guaranteed to the owners of the land under Art.31-A. Therefore, there can be no doubt that law which infringes a fundamental right even though passed before the amendment of the Constitution under which the fundamental right is conferred, would thereafter have no effect. It is true that the Constitution (Seventh Amendment) Act is not retrospective. It cannot therefore affect any acquisition made prior to the date when it came into force that is, prior to 20-06-1964. But any acquisition made subsequent to that date must conform to the requirements of Art.31-A as amended. If it does not, it would infringe the fundamental right guaranteed to the owner of the land under Art.31-A second proviso and would be void. We have therefore no hesitation in holding that S.23(1) of the Land Acquisition Act as amended by the Nagarjunasagar Act is ultra vires Art.31-A in so far as it applies to acquisition of lands made after 20-06-1964 within the ceiling limit and under personal cultivation of a person.

7. Looking at the case on hand, this Court is of the view that the application of the provisions of Nagarjuna Sagar Act for determination of compensation can definitely be said to be violative of Article 31-A of the Constitution of India. Evidently Section 4(1) notifications in the instant case was published in the Gazette on 16.05.1980 and thereafter after following due procedure under law, the authorities have determined the compensation under the Nagarjuna Sagar Act. Having regard to the fact that the provisions of Nagarjuna Sagar Act have no application for those acquisitions that have taken place prior to 20-06-1964 and as Section 4(1) notification in the instant case was published

on 16.05.1980, this court is of the view that petitioners are entitled for compensation under the provisions of the Land Acquisition Act.

8. Having regard to the above facts and circumstances of the case, this Court is of the view that the petitioners are entitled for payment of compensation only under the provisions of the L.A.Act, 1894 and as the respondents have already passed an award fixing the compensation by applying the provisions of Nagarjuna Sagar Act, they are hereby directed to pay the difference of market value payable to them in terms of award No.24/81, dated 21.11.1981, as per the provisions of the L.A.Act, 1894, with all other consequential benefits such as interest, solatium etc.

Accordingly, this writ petition is allowed. No order as to costs.

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(GOPALA KRISHNA TAMADA,J)

Dt.26.07.2007
v v

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[1] AIR 1980 AP 165